

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 1004 of 2018  
and  
C.M.P.No. 5362 of 2018

M.Lakshmi

...Petitioner

Vs.

1.S.Ramanathan  
2.S.Ramakrishnan  
3.S.Ranganayagi  
4.Uma Maheswari  
5.Minor. R.Karthik Vignesh

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.11.2017 made in I.A.No.482 of 2017 in O.S.No.451 of 2013 on the file of the IV - Additional District & Sessions Judge, Coimbatore.

For Petitioner: Mr.C.R.Prasanan

For Respondents: Mr.R.Venkatachalapathy for R2 to R5

O R D E R

A novel application was filed before the Trial Court with a peculiar prayer which reads as follows:-

"For the reasons stated in the accompanying affidavit the petitioners most humbly pray that this Hon'ble Court may be pleased to hold that alleged documents of Wills and cancellation are inadmissible except by following Section 68 of Evidence act and pass orders in the interest of justice."

2. I am unable to resist, observing that this application is nothing but an abuse of process of the Court. It is a common knowledge that a document which requires to be attested under law has to be proved in the manner known to law under Section 68 or 69 or 71 of the Evidence Act. I am unable to comprehend

the object sought to be achieved by making such a prayer. The provisions of the Evidence Act are very clear that documents which require attestation will have to be proved by examining one attesting witness atleast. It appears from the other pleadings that the attempt of the learned counsel for the petitioner / plaintiff before the Trial Court is to prevent marking of the Will by the propounder.

3. The law relating to marking of Wills has been settled by the Division Bench of this Court reported in 2016 6 MLJ 371 wherein, the Division Bench has categorically held that marking is only an administrative act and it does not constitute proof of the document. Even if the Will marked by the propounder or the beneficiary unless the attesting witness is examined or the requirements of Section 68 or 69 or 71 of the Evidence Act as the case may be are complied with, the Court cannot rely upon the Will.

4. Therefore, I do not see any justification to interfere with the order of the Trial Court which had fortunately dismissed the application. This civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:

The IV - Additional District & Sessions Judge,  
Coimbatore.

+1 CC to Mr.C.R.Prasanan, Advocate sr 33214.

C.R.P.No. 1004 of 2018  
and  
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JP(CO)  
SP(07/12/2020)